

**REMARKS:**

As discussed previously, applicant's invention relates to an oatstraw extract which is prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw to remove oatstraw particles. As discussed below, removal of the oatstraw particles allows the extract to be used as a topical lotion and as an additive in other products. Furthermore, the combination of oatstraw extract in magnetically-treated water has surprising properties, as discussed below.

Claim 1 describes a topical lotion for relieving pain, swelling or inflammation which comprises glycerine; lavender oil; and oatstraw extract, wherein the oatstraw extract is prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw to remove oatstraw particles.

Claim 8 describes a method of treating pain, swelling, itching or inflammation wherein the above-described lotion is applied topically to inflamed, painful or swollen areas.

Claim 17 describes an additive comprised of at least 50% oatstraw extract, the oatstraw extract prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw to remove oatstraw particles, at least 25% glycerine, and 0.1-0.2% lavender oil and a suitable carrier.

Claim 18 describes a hair or body product comprising: at least 50% oatstraw extract, the oatstraw extract prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw to remove oatstraw particles, at least 25% glycerine, and 0.1-0.2% lavender oil and a suitable carrier.

Claim 20 describes a process for preparing an oatstraw extract comprising magnetically treating a quantity of water, heating the magnetically treated water, steeping a quantity of oatstraw in the heated water, thereby producing an

oatstraw mixture and then filtering the mixture to remove the oatstraw, thereby producing an oatstraw extract.

Claim 25 describes a topical lotion for relieving pain, swelling or inflammation having an active ingredient consisting of oatstraw extract, the oatstraw extract is prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw to remove the oatstraw, wherein the lotion is applied topically to the skin of an individual in need thereof.

Claim 26 is directed to an additive having an active ingredient consisting of oatstraw extract, the oatstraw extract is prepared by magnetically treating water, heating the magnetically treated water, steeping oatstraw in the heated water and filtering the steeped oatstraw, wherein the additive is added to another product.

Claims 1, 2, 5-9, 17-22, 24-26 and 28-30 were rejected under 35 USC 103(a) over Weed in view of Puchalski, Jr. and Jakobson, in further view of Ito or Patrasenko.

As discussed herein, the claims recite a positive step wherein water is magnetically treated prior to use in the preparation of the oatstraw extract wherein oatstraw is steeped in the magnetically treated water and then the suspension is filtered to produce an oatstraw extract. As discussed below, it is noted that the properties of magnetically treated water are not identical to the tap water used by Weed and furthermore the combination of the magnetically treated water and the oatstraw extract is a synergistic combination that has improved and surprising properties, for example, improved absorption on skin and improved "feel" on the skin, that is, no sticky residue, compared to an oatstraw extract prepared with other waters such as deionized water and tap water, as discussed below and in the accompanying Declaration.

The Examiner further noted that "Weed does not expressly teach to make water extract of oatstraw as herein claimed, or the addition of glycerin and lavender oil" but that Puchalski teaches a polyol to enhance skin feel and Jakobson teaches the addition of lavender oil. It is noted that both Puchalski and Jakobson

teach several other alternative compounds which could be used and do not provide any teaching that glycerol or lavender are necessarily preferred. That is, there must be incentive to combine specifically glycerol or lavender with the oatstraw extract of Weed. It is not clear how one of skill in the art would be expected to select specifically glycerol and lavender from a list of possible additives nor does Weed teach that these additives would be beneficial or desirable.

Regarding "magnetically treated water", the Examiner has stated that "the employment of magnetically treated water for preparing therapeutical composition would have been obvious in view of Ito or Patrasenko [which] teach magnetic treatment provide cleaner water".

Regarding Ito, it is noted that Ito teaches a method of preventing "red rust", scale and slime from forming on the inner wall of a pipe (US Patent 5,055,189, column 3, lines 45-50) wherein the method comprises subjecting the water in the pipe to far IR and magnets. Thus, Ito does not teach cleaner water, but rather a method for having cleaner pipes as minerals and the like are more readily dissolved or remain in solution in the magnetically treated water and are therefore prevented from precipitating out of solution and onto the walls of the pipes. That is, the magnetization of the water improves the ability of the water to retain solutes such as minerals. Furthermore, one would expect that the tap water exiting the pipes as taught by Ito would be saturated with minerals.

Regarding Patrasenko, this reference teaches a water purification system wherein incoming water is subjected to a magnetic field and is then cooled and aerated prior to flocculation and settling. The water is then filtered to remove iron oxides, nitrates, heavy metals, residual chlorine and organic compounds. Patrasenko states that "the prepared water corresponds to quality standards for drinking water and has curative-prophylactic properties, due to higher activity of oxygen and other gases dissolved in water".

Thus, Patrasenko teaches a water purification system that also involves aeration of water to add oxygen, and flocculation of the water and subsequent settling and filtering to remove contaminants.

However, neither Patrasenko or Ito teaches or suggests that an oatstraw extract prepared in magnetically treated water would have improved properties, as discussed below. Furthermore, even taking into account Patrasenko's comments regarding "curative-prophylactic properties", it is important to note that those relate to drinking water, not water which is applied to the skin or to other products. At best, Patrasenko may argue that using water prepared as described therein in preparation of an oatstraw extract was "worth a try" but that there was no guarantee that an extract prepared this way would have different properties on the skin compared to an extract prepared in untreated water, and certainly no suggestion that an oatstraw extract prepared in magnetically treated water would have improved spreading and "feel" characteristics with no sticky residue, compared to similar extracts prepared with deionized water or tap water. This is supported by the fact that at least both the Examiner and Mr. Rick Green initially concluded that magnetically treated water was equivalent to tap water and/or distilled, deionized water, that is, that the specific water used in the oatstraw extract would make no difference, which was shown by the inventor and confirmed by Mr. Green to not be the case. This is also discussed in detail in the inventor's Declaration enclosed herewith.

In the most recent "Response to the Arguments", the examiner stated that "features upon which applicant relies (i.e., minerals in water) are not recited in the rejected claim(s)". This is not understood, because the mineral content of the water has no effect on the magnetization of the water, as discussed in the attached affidavit. Specifically, it is believed that magnetically treating water increases the ability of the water to retain solutes, whether these solutes are minerals in a pipe as taught by Ito or components of an aqueous oatstraw extract as taught by the inventor. As such, the mineral content of the water is not important as magnetization of water will increase the ability of the water to retain solutes compared to untreated water regardless of the mineral content of the water. As discussed in the attached affidavit, magnetically treating the water increases the ability of the water to retain compounds released from the oatstraw during the steeping process and produces an oatstraw extract that has improved properties compared to an extract prepared in either tap water or deionized

water. These properties include increased rate and depth of absorption and elimination of a residual "stickiness" associated with the tap water extract and the deionized water extract. Thus, it is applicant's position that the mineral content of the water is unimportant and this is stated in the declaration. Furthermore, it is the magnetic treatment of the water that results in the unexpected results of improved absorption and feel characteristics and this limitation appears in the claims meaning that the claims are commensurate in scope as the unexpected results. The reasons why these properties of the magnetically treated water are unexpected have been discussed previously and are discussed herein and in the attached Declaration.

In the aforementioned "Response to the Arguments", the examiner has also requested that the Declaration "must compare the claimed subject matter with the closest prior art". Attached herewith is such a Declaration which compares applicant's invention primarily to the aforementioned Weed reference as well as to the combination of Weed with Ito. It is noted that the majority of these arguments and observations have been raised in previous responses albeit not necessarily in affidavit form. As discussed therein, Weed differs from the instant invention on at least three major points: Weed does not teach or suggest the use of magnetically treated water; Weed does not teach or suggest filtering oatstraw steeped in magnetically treated water, thereby producing an oatstraw extract; and Weed does not teach using the extract as a lotion, a carrier or additive to other products.

As discussed in the Declaration and in the previous responses, Weed teaches adding boiling water to cut oatstraw and then adding that "oats and all" to a tub of water.

As discussed in the Declaration and in the specification, applicant's invention is an oatstraw extract prepared by steeping oatstraw in magnetically treated water. As discussed in the Declaration and as discussed previously, it is believed that the magnetic treatment of water increases the ability of the water to retain solutes, such as minerals or in applicant's case, compounds secreted from the oatstraw during the steeping process. A first benefit of this combination of oatstraw extract in magnetically treated water is that more of the beneficial compounds secreted by the

oatstraw are retained in solution in the magnetically treated water. A second surprising benefit is that the oatstraw extract in magnetically treated water has greater rate and depth of absorption compared to comparable extracts prepared in either tap water or deionized water. A third surprising benefit is that the oatstraw extract in magnetically treated water lacks the residual stickiness found in the extracts prepared with either tap water or deionized water, as discussed in the Declaration and in the previously filed affidavits. It was this discovery that enabled the inventor to realize that the extract could be added to other products and resulted in such products being produced.

The examiner's comments regarding the references having been attacked individually rather than in combination is not understood as it is believed that the combination of the references was in fact discussed in the previous response. The statement that "the citing of Ito and Patrasenko is merely to show that magnetic treatment of water is well-known in the art and would have been obvious to one of skill in the art to use such process for a cleaner water" is also not understood in view of the earlier comment regarding failure to attack references in combination. Specifically, applicant can only address those references which have been cited and what these combinations would produce. Furthermore, it is not "cleaner" water per se that results in applicant's invention but the magnetic treatment which increases the ability of the water to retain components secreted by the oatstraw during steeping and also results in an extract having improved absorption and spreading properties as discussed previously.

As discussed previously, combining Weed with either Ito or Patrasenko teaches adding oatstraw to bath water which may be magnetically treated to improve water flow rates (Ito) or bath water which has been magnetically treated, oxygenated, flocculated, settled and filtered. Furthermore, the magnetized water taught by Ito would likely be saturated with minerals to prevent scaling and therefore would likely not have a noticeable effect in the bath water taught by Weed. Similarly, the magnetized water taught by Patrasenko is for drinking, not for bathing or applying to the skin. Furthermore, combining Puchalski and Jakobson to these references

teaches adding glycerol and lavender oil respectively to bath water containing oatstraw which again is not applicant's invention.

Thus, the combination of the references cited by the examiner teaches a bathtub of magnetically treated water with oatstraw in it to which glycerol and lavender oil is added. As discussed above, this is not applicant's invention. It is also noted that there must be incentive to combine references and the art must be considered as a whole. Specifically, no prior art has been cited which teaches or suggests that a filtered oatstraw extract would retain its properties compared to a suspension or that teaches or suggests that magnetically treated water would have improved absorptive and "feel" properties when applied to the skin or that an oatstraw extract in magnetically treated water would lack the associated stickiness so that it could be used as an additive or carrier. That is, no references have been cited which teach filtering an aqueous oatstraw extract to remove oatstraw particles or that use of magnetically treated water would produce an oatstraw extract that absorbed more rapidly and more deeply into the skin and that also lacked the residual stickiness found with filtered extracts prepared in tap water or deionized water. No references have been cited regarding the absorptive properties of magnetically treated water on skin. Thus, while the combination of the references cited by the examiner does not teach applicant's invention as discussed above, it is also clear that there is no incentive in the prior art to take the oatstraw soaking bath of Weed and use magnetically treated water instead of tap water. There is also no teaching or suggestion that so doing would eliminate the sticky residue left by the oatstraw bath taught by Weed or that the oatstraw particles of Weed could be removed from the soaking bath prior to use or that the oatstraw soaking bath could instead be bottled and used as a lotion, carrier or additive to another product.

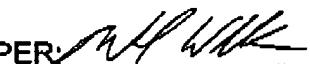
Regarding the obviousness of using magnetically treated water as "cleaner" water, it is noted that in previous office actions the examiner has previously indicated that magnetically treated water was considered to be equivalent to tap water for examination purposes and that the benefits of magnetically treating water was controversial at best. As discussed in his affidavit, this was also the position of Mr.

Green who believed that the use of deionized water would make no difference in applicant's extract and was surprised when the properties were different compared to the extract prepared in magnetically treated water. It is again noted that deionized water is considered to be cleaner than tap water and that it was not the "cleanness" of the water that affected the properties of the extract but the magnetic treatment of the water that produced the improved extract as discussed in the attached Declaration.

In view of the foregoing, further and more favorable consideration is respectfully requested.

Respectfully submitted

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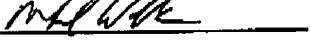
Monday, January 17, 2005

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 DATE: January 17, 2005